



June 14, 1999

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
Office of the City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-1647

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125693.

The City of Dallas (the "city") received a request for information relating to a March 12, 1999 hearing on the requestor's termination from city employment. You seek to withhold the requested information under sections 552.103, 552.107, and 552.111 of the Government Code.

Section 552.103(a) of the Government Code, known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You indicate that the requestor is involved in proceedings with the city in connection with her termination. The circumstances you describe do not in our opinion, establish that the city reasonably anticipates litigation in this matter. *Compare* Open Records Decision Nos. 386 (1983), 336 (1982) (filing of EEOC complaint as basis of claim for withholding under the "litigation exception"); with Open Records Decision No. 588 (1991) (contested case under the Administrative Procedure Act, Government Code chapter 2001, as litigation for purposes of the litigation exception). You may not withhold the requested information under section 552.103.

You also claim the protection of the attorney work-product aspect of section 552.111. An element of the showing required to establish protection of attorney work-product under section 552.111 is that the information was created for trial or in anticipation of litigation. *National Tank Co. v. Brotherton*, 851 S.W.2d 193 (Tex. 1993). You have not shown that the information at issue was prepared for trial or, as indicated above, for litigation that the city may reasonably anticipate. Therefore, you may not withhold any of the requested information under the attorney work-product aspect of section 552.111.

Section 552.107(1) incorporates the attorney-client privilege. It protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* In our opinion, you have not demonstrated that the information at issue contains either attorney advice or confidential attorney-client communications. Therefore, none of the information may be withheld under section 552.107. You must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "William Walker", with a stylized, flowing script.

William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 125693

Encl. Submitted documents

cc: Ms. Posey Hopkins
2804 Fairway
Cedar Hill, Texas 75104
(w/o enclosures)